



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/158083

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 03, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 21, 2014, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner's appeal is timely as to both a notice of tax intercept tax issued to collect an overissuance of FoodShare benefits as well as the underlying overpayment and whether Petitioner is liable for the overpayment for which the agency seeks recovery.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

█  
█

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Jose Silvestre  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest a July 16, 2012 notice of FoodShare overissuance and a December 14, 2012 tax intercept notice.

3. Petitioner did not have an open FoodShare case at any time relevant here; rather, the overpayment alleged is for the FoodShare household headed by a woman who was at one time a friend of Petitioner – a woman identified here by initials EP.
4. Petitioner was sent a Notification of FoodShare Overissuance dated July 16, 2012 that indicated that he was liable for a \$501.00 FoodShare overissuance for the time period of March 1, 2012 through May 31, 2012 due to client error. (Claim # [REDACTED]) The address to which the notice was sent to 2461 N. 15th.
5. Agency case notes (Exhibit # 4) show that the agency knew Petitioner was incarcerated as of at least May 2012.
6. Petitioner was sent a tax intercept notice dated December 14, 2012 that informed Petitioner that his tax refunds were subject to intercept to repay the \$456.00 overpayment of FoodShare benefits. The address to which the notice was sent to 2461 N. 15th.
7. On or about May 13, 2014 Petitioner's income tax return was intercepted to repay \$224.00 as the remainder of the balance due on claim # [REDACTED]. This triggered the instant appeal.
8. Petitioner was incarcerated on a continuous basis for the period from early November 2011 through August 5, 2014. Petitioner never resided at the 15<sup>th</sup> Street address noted herein above.

### DISCUSSION

This decision begins with a description of the regulatory framework under which the agency seeks to recover this FoodShare overissuance.

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2). All adult members of the household are liable for an overpayment. *FoodShare Eligibility Handbook, Appendix 7.3.1.2; also see 7 C.F.R. §273.18(a)(4).*

Once an overpayment is established, *Wis. Stat. § 49.85* provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id. at § 49.85(3).*

The hearing right is described in *Wis. Stat. § 49.85(4)(b)* but is limited:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing. (Emphasis added).

The time limit for filing an appeal of a tax intercept notice is 30 days. *§49.85(3)(a)2, Stats.*

As for the underlying overpayment, the Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal

must be filed within 90 days of the date of a negative action on the case by the agency. *See FoodShare Wisconsin Handbook, §6.4.1 and 7 CFR, §273.15(g)*. This presumes, however, that a petitioner has been provided with an adequate and timely notice. Here Petitioner was incarcerated from November 2011 through August 5, 2014. He was never a resident of the N. 15<sup>th</sup> Street address and there is no evidence to indicate that he even has contact with the person who claimed him as part of her FoodShare household even after he was incarcerated. Thus I am concluding that Petitioner never received notice of either the overpayment or the tax intercept and find his appeal to be timely as to both.

The next question is whether Petitioner was living in the household that was overissued FoodShare during the time period involved here and thus liable for this overpayment.

The resolution to this case lies in the determination of where Petitioner was living from the time this overpayment began through the issuance of the overpayment notices and the tax intercept notice. And the answer is that the available evidence shows that Petitioner was incarcerated at all times relevant here. If he was ever in EP's household he certainly was not during the period of the overissuance involved here. Apparently (nothing was offered in evidence as to her case) she claimed he was part of her household on a six month report form filed in early 2012 and never reported that he was not living with her. Further, there is no evidence that he ever resided at the 15<sup>th</sup> Street address. I am, therefore, reversing this overpayment and tax intercept as to Petitioner. This has no effect on this overpayment as to EP or any other member of her household at the time involved here.

### **CONCLUSIONS OF LAW**

1. That Petitioner's appeal is timely as to the underlying overpayment as well as the tax intercept as Petitioner never received notice as he was not living at the address to which the overpayment and tax intercept notices were sent.
2. That Petitioner is not liable for the FoodShare overpayment represented by claim # [REDACTED] because he was not living in the household that was overissued FoodShare during the time period involved.

**THEREFORE, it is**

### **ORDERED**

That this matter is remanded to the agency as well as the Public Assistance Collection Unit with instructions to take the administrative steps necessary to reverse Petitioner's liability for claim # [REDACTED]. This must be done within 10 days of the date of this decision. Any funds taken from Petitioner to recover the overissuances involved here must be returned to Petitioner. This process must be initiated within 10 days of the decision.

That this decision does not in any way reverse the underlying overpayment as to EP or any other liable party.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 29th day of August, 2014

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 29, 2014.

Milwaukee Enrollment Services  
Public Assistance Collection Unit